

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HORACE CALVIN HOUSTON,

Petitioner,

vs.

RENEE BAKER,

Respondent.

Case No. 3:14-cv-00537-RCJ-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. As the court explained previously, on the face of the petition petitioner indicates that he filed a previous federal habeas petition challenging this judgment of conviction, which was dismissed as untimely (ECF #1-1 at 2; 3:11-cv-00438-ECR-WGC). However, 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” The instant petition is a successive petition, which requires petitioner to seek and obtain leave of the Ninth Circuit Court of Appeals to pursue. *See* 28 U.S.C. § 2244(b)(3) et seq. Petitioner further indicates on the face of the petition that he did not obtained leave to file a successive petition from the Court of Appeals.

1 On November 19, 2014, this court issued a show-cause order directing petitioner to demonstrate
2 that this petition should not be dismissed as a second or successive petition (ECF #5). Petitioner filed
3 a motion for enlargement of time (ECF #6) and also filed a notice of application for leave of the Ninth
4 Circuit Court of Appeals to file a second or successive petition, which he filed with the Ninth Circuit
5 on December 18, 2014 (*see* ECF #8). Thus, petitioner's application for leave is currently pending
6 before the Ninth Circuit. However, the requirement that prisoners obtain authorization from the circuit
7 court prior to filing a second or successive petition in the district court is jurisdictional. *Burton v.*
8 *Stewart*, 549 U.S. 147, 157 (2007). This court is, therefore, without jurisdiction to entertain the instant
9 petition, and the petition is dismissed accordingly.

10 **IT IS THEREFORE ORDERED** that the Clerk shall detach and file the petition (ECF #1-1).

11 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** for lack of jurisdiction.

12 **IT IS FURTHER ORDERED** that petitioner's application to proceed *in forma pauperis* (ECF
13 #1), motion for appointment of counsel (ECF #3), and motion for enlargement of time (ECF #6) are all
14 **DENIED** as moot.

15 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as jurists of
16 reason would not find the court's dismissal of this petition to be debatable or incorrect.

17 DATED: This 20th day of January, 2015.

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21 UNITED STATES DISTRICT JUDGE
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